Tax Forum

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ACCELERATED CONTRIBUTIONS

All of us are familiar with the tax planning device of making gifts to charitable organizations in the form of stock. This has enjoyed increasing popularity in recent years due to a rising market, inasmuch as it gives the taxpayer an opportunity to realize tax-free appreciation on his investments.

Stock that has increased in value can be given to a qualified charity and a deduction taken in the amount of its fair market value on the date of the gift. The taxpayer is therefore able to make the same contribution as he would have if he sold the stock and turned the proceeds over to the charity—but no capital gains tax is involved.

Presently the Treasury Department is considering eliminating this tax benefit. While there is no way of predicting when, and if, legislative action will be taken, it would seem advisable for taxpayers to accelerate their current year's gift program if they contemplate using appreciated securities to meet their charitable obligations.

Ordinarily there is a tendency to wait until year end, when the amount of income can be more accurately determined; but in view of the current tax reform recommendations of the Treasury Department, more immediate action is indicated.

"T&E" TRENDS

Earlier this year the Forum called attention to the Sanford and Alter Tax Court decisions dealing with inadequate substantiation of entertainment expenses. Subsequent cases continue to emphasize the need of adhering to the record keeping rules in Publication 463(10-68) of the Internal Revenue Service—indeed a thorough knowledge of all of the rules contained in that circular, and compliance therewith, is a "must" if travel and entertainment expense deductions are to be sustained.

In *Wm. Andress, Jr. and DeVona C. Andress v. Commissioner, 51TC, No. 85* taxpayer entertained quite a bit in his home. Records were kept as to expenditures for liquor, food, catering costs, etc. but in no instance was the business purpose set forth. The same was true of bills from private clubs that formed part of a deduction taken for "promotion and courtesy" expenses.

The court indicated that these deductions were entertainment expenses but taxpayer had failed to comply with the entertainment rules on two scores—he was unable to prove the direct relation of these expenses to his business, and he had failed to keep adequate records.

Similarly in *Henry E. Earle and Mary Earle v. Commissioner, T.C. Memo 1969-30,* taxpayer, an employee of an underwriting firm annually entertained about 175 individuals at a Christmas party at his home. He received partial reimbursement from his employer for this, and the balance was deducted on his tax return. He also frequently entertained customers, actual and potential, as well as employees of his firm.

With regard to the Christmas party the only record was the cancelled checks covering the expense, and in the case of other entertaining, the bills. In neither case was the business purpose indicated. Such expenses were disallowed for failure to comply with the substantiation requirements of Section 274(d) of the Code.

An important "T&E" case is *John Robinson v. Commissioner, 51TC, No. 52,* in that a possible repercussion of negligible compliance is brought to the fore. Here taxpayer, a theatrical agent, spent large sums on travel and entertainment in search of new talent and bookings. He maintained a regular set of books that clearly showed his annual income and expenditures, as well as all cancelled checks.

As far as recordkeeping for travel and entertainment, however, his diary only indicated the cities visited, and the places of entertainment within those cities. In rare instances the name of an individual would be included. The Tax Court applied the Cohan rule in determining the allowable deductions for 1961 and 1962 in fairly substantial amounts; but only a minimal amount was allowed in 1963, due to failure to comply with the substantiation rules of Reg. 1.274-5(c), effective beginning January 1, 1963.

The startling implication of this case was the attempt by the Treasury Department to assess the negligence penalty for failure to keep adequate records. The Court failed to sustain the Commissioner in his position by virtue of the presence of a set of books that recorded all income and deductions. It was therefore possible for the examining Revenue Agent to make the necessary adjustments. There had been no negligent or intentional disregard of the Commissioner's rules concerning a taxpayer's records.

While deductions may be disallowed for failure to comply with particular substantiation requirements of the Code Section permitting those deductions, as long as a taxpayer's records adequately reflect his income and expenses the negligence penalty may be avoided.

EXTENDED COVERAGE OF SECTION 1239

The recent Revenue Ruling 69-109, I.R.B. 1969-10, 38, has altered the tax implications of Section 1239 of the Code. Hitherto no capital gains treatment would be allowed in the case of a gain on the sale or exchange of depreciable property between husband and wife; or an individual and a corporation, more than 80% in value of the outstanding stock of which was owned by the individual, his spouse, or minor children and grandchildren. The present ruling no doubt is founded on an even stricter interpretation of the phrase "directly or indirectly" in Sec. 1239(a), with the result that any gain on the sale of depreciable property between two corporations, where one individual owns more than 80% in the value of the outstanding stock in both corporations, will also result in ordinary income.

Of course as time progresses, Sections 1245 and 1250 of the Code will have an equivalent effect on intercorporate sales through depreciation recapture; but this new interpretation of Section 1239 will negate the possibility or even a portion of the gain receiving beneficial tax treatment in the case of affiliated corporations of this type.

TWENTY-FIVE YEARS AGO—in THE WOMAN CPA

All too frequently the very characteristics which make one proficient at a job tend also to limit his ultimate success in his chosen field. Consequently, it behooves the ambitious to comprehend that fact and to know what characteristics he should watch so that his achievements may equal the fullest measure of his ability.

Most important for accountants to watch are those characteristics which have led to the observation that accountants are not *good mixers*. There are exceptions, of course, but most accountants do not devote enough time and thought to the art of making themselves popular with others. . . .

The accountant by nature is trained to locate and call attention to error. Because of this urge, cultivated or native, he may be too prone to find fault with others and to express his views quite frankly. Faultfinding is most detrimental, especially if one desires to be a good mixer.

This formula, taken from *The Executive's Manual*, seems to sum up the entire thought: "In dealing with *things* accuracy is the primary requirement, but in dealing with *people* constructiveness is the primary requirement; therefore, accuracy becomes secondary in importance."

From "What Accountants Should Watch." by Rush H. Pearson,

Personnel Consultant, Montgomery, Alabama

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